

1 LATHAM & WATKINS LLP  
 2 Karl S. Lytz (Bar No. 110895)  
 3 Richard W. Raushenbush (Bar No. 134983)  
 4 Benjamin J. Horwich (Bar No. 249090)  
 5 Randi L. Wallach (Bar No. 241171)  
 6 505 Montgomery Street, Suite 2000  
 7 San Francisco, California 94111-2562  
 8 Telephone: (415) 391-0600  
 9 Facsimile: (415) 395-8095  
 Email:  
 6 Karl.Lytz@lw.com  
 7 Richard.Raushenbush@lw.com  
 8 Benjamin.Horwich@lw.com  
 9 Randi.Wallach@lw.com

10 Attorneys for Defendant  
 11 PACIFICORP, an Oregon Corporation

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

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 13 **KLAMATH RIVERKEEPER**, a nonprofit  
 14 public benefit corporation; **HOWARD**  
 15 **McCONNELL**; **LEAF G. HILLMAN**;  
 16 **ROBERT ATTEBERY**; and  
 17 **BLYTHE REIS**;  
 18

19 Plaintiffs,  
 20

21 v.  
 22

23 **PACIFICORP, INC.**, an Oregon  
 24 Corporation;  
 25

26 Defendant.  
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CASE NO.: C 07-06199 WHA

**DEFENDANT PACIFICORP'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO DISMISS DUPLICATIVE  
SUIT**

Date: January 24, 2008  
 Time: 8:00 a.m.  
 Place: Courtroom 9, 19<sup>th</sup> Floor

Judge: Hon. William H. Alsup

Defendant PacifiCorp (“PacifiCorp”) respectfully requests that the Court take judicial notice, pursuant to Federal Rule of Evidence 201, of the following facts and documents:

1. (A) The fact that Howard McConnell, Leaf G. Hillman, Robert Attebery, Frankie Joe Myers, Terance J. Supahan, Michael T. Hudson, Blythe Reis and Klamath Riverkeeper, a project of the Klamath Forest Alliance, (collectively “*McConnell* Plaintiffs”), filed an complaint in the United States District Court for the Northern District of California captioned *McConnell v. PacifiCorp, Inc.*, No. C-07-02382 WHA (N.D. Cal.) (“*McConnell* Complaint” or “*McConnell* case”), a true and correct copy of which is attached hereto as Exhibit 1, and (B) the fact that *McConnell* Plaintiffs made the allegations set forth therein.
2. (A) The fact that *McConnell* Plaintiffs filed an Administrative Motion to Consider Whether Cases Should Be Related (“Related Case Motion”) in the *McConnell* case, *McConnell* Docket No. 60, a true and correct copy of which is attached hereto as Exhibit 2, and (B) that *McConnell* Plaintiffs made the statements set forth therein.
3. (A) The fact that *McConnell* Plaintiffs and PacifiCorp filed a Joint Case Management Statement in the *McConnell* case (“*McConnell* Joint CMC Statement”), *McConnell* Docket No. 44, a true and correct copy of which is attached hereto as Exhibit 3, and (B) that *McConnell* Plaintiffs made the statements marked ‘Plaintiffs’ Statement” therein.
4. (A) The *McConnell* August 16, 2007 Case Management Order and Reference to Magistrate Judge for Mediation / Settlement (“*McConnell* CMO”), *McConnell* Docket No. 48, a true and correct copy of which is attached hereto as Exhibit 4, and (B) the fact that the Court set the *McConnell* case management deadlines set forth therein.
5. The *McConnell* case Order Granting in Part and Denying in Part Motion to Dismiss or for Judgment on the Pleadings and Denying Motion to Stay

(“*McConnell Order*”), *McConnell* Docket No. 49, a true and correct copy of which is attached hereto as Exhibit 5.

6. The fact that the *McConnell* Plaintiffs have not sought leave of court to amend their *McConnell* Complaint in the *McConnell* case, as evidenced by the lack of a motion to seek leave for such amendment on file in the *McConnell* Docket, current as of December 20, 2007, a true and correct copy of which is attached hereto as Exhibit 6.

7. The fact that the Court determined that the *McConnell* case and *Riverkeeper* case, *Klamath Riverkeeper et al. v. PacifiCorp*, N.D. Cal. Case No. CV-07-06199 WHA, are related, as set forth in the Court's Related Case Order, *McConnell* Docket No. 61, a true and correct copy of which is attached hereto as Exhibit 7.

13 The above-listed documents and facts are relevant to the Court's consideration of  
14 PacifiCorp's Motion to Dismiss Duplicative Suit, which is filed concurrently herewith.

15                   The Court may take judicial notice of facts “generally known” or “capable of  
16 accurate and ready determination by resort to sources whose accuracy cannot reasonably be  
17 questioned.” Fed. R. Evid. 201(b). Such notice is mandatory “if requested by a party and [the  
18 Court is] supplied with the necessary information.” Fed. R. Evid. 201(d). The fact that  
19 *McConnell* Plaintiffs filed the *McConnell* case with this Court and made certain allegations  
20 therein; the fact that *McConnell* Plaintiffs filed a Related Case Motion in the *McConnell* case  
21 with this Court and made certain statements therein; the fact that *McConnell* Plaintiffs and  
22 PacifiCorp filed the *McConnell* Joint CMC Statement in the *McConnell* case and that *McConnell*  
23 Plaintiffs made certain allegations therein; the fact that the Court issued the *McConnell* Order  
24 and the *McConnell* CMO; the fact that the *McConnell* Plaintiffs have not sought leave to amend  
25 their Complaint in the *McConnell* case; and the fact that the Court related the *McConnell* and  
26 *Riverkeeper* cases are all properly subject to judicial notice because these facts and documents  
27 are “capable of accurate and ready determination by resort to sources whose accuracy cannot  
28 reasonably be questioned.” *See* Fed. R. Evid. 201(b).

1                   It is appropriate for this Court to take judicial notice of these facts and documents  
2 because they are either ascertainable from or are true and correct copies of the records of this  
3 court in the *McConnell* case. *See Mullis v. United States Bankruptcy Court for the District of*  
4 *Nevada*, 828 F.2d 1385, 1388 (9th Cir. 1987) (stating that, on a motion to dismiss, court may  
5 take judicial notice of pleadings, orders and other papers on file in bankruptcy court); *MGIC*  
6 *Indemnity Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (providing that, on a motion to  
7 dismiss, courts may take judicial notice of matters of public record outside the pleadings,  
8 including motions and supporting memoranda filed in declaratory judgment suit in federal  
9 district court). PacifiCorp is not requesting that the Court take judicial notice of these documents  
10 for the truth of any assertions contained therein, but rather for the fact that they exist in this  
11 court's files, and that they say what they say.

12                   PacifiCorp respectfully requests that the Court grant this Request for Judicial  
13 Notice in Support of PacifiCorp's Motion to Dismiss Duplicative Suit.

14 Dated: December 20, 2007

15                   Respectfully submitted,

16                   LATHAM & WATKINS

17                   By : \_\_\_\_\_ /s/  
18                   Richard W. Raushenbush

19                   Attorneys for Defendant PACIFICORP

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